Supreme Court, U.S.
FILED
061514 MAR 09 2007
OFFICE OF THE CLERK

No. ____

In the Supreme Court of the United States

MICHAEL A. THOMAS, *PRO SE*,
Petitioner,

v.

JOHN E. POTTER, Postmaster General,
United States Postal Service,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

MICHAEL A. THOMAS
Pro Se
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May 11, 2007

Becker Gallagher · Cincinnati, OH · Washington, D.C. · 800.890.5001

QUESTIONS PRESENTED FOR REVIEW

1. Petitioner presented and cited a conflicting decision between U.S. Court of Appeals for the 7th Circuit and the Supreme Court of the United States, of the two courts which court decision is controlling?

2. Does falsification of the plaintiff's personnel records, as well as failure to comply with the terms of the EEO Settlement Agreement, demonstrate deliberate retaliation of the defendant against the plaintiff?

3. Does denial of plaintiff's seniority rights qualify as an adverse employment action?

4. Whether the Respondent falsification of Official Personnel Records in order to change the Petitioner's shift a violation to, or conflict with the 7th Circuit ruling of *Aviles v. Cornell Forge Co.*, 241 F.3d 589, 593 (7th Cir. 2001)?

5. Should the U.S. Court of Appeals for the 7th Circuit comply with Title VII, *EEOC Compliance Manual Section 2*; (Threshold issues)?

TABLE OF CONTENTS

QUESTIONS PRESENTED i

TABLE OF CONTENTS ii

INDEX TO APPENDICES iii

TABLE OF AUTHORITIES v

OPINIONS BELOW 1

JURISDICTION 1

STATUTORY PROVISION INVOLVED 1

STATEMENT OF THE CASE 2

A. Factual Background 2

REASONS FOR GRANTING THE PETITION 6

CONCLUSION 9

INDEX TO APPENDICES

Appendix A: Order on rehearing en banc, denied December 14th, 2006 . . . . . 1a

Appendix B: Order on Appeal from U.S. Court of Appeals for the 7th Circuit, affirmed October 11, 2006 . . . . . 3a

Appendix C: Order on rehearing en banc, denied October 24, 2005 . . . . . 6a

Appendix D: Order on Appeal from U.S. Court of Appeals for the 7th Circuit, August 18, 2005 . . . . 8a

Appendix E: Order from the U.S. District Court for the Northern District of Illinois, Eastern Division, Defendant Motion for Summary Judgment is granted, dated December 20, 2004 . . . . 10a

Appendix F: EEO Settlement Agreement, December 5, 1994, Petitioner's Exhibit #1 . . . . . 13a

Appendix G: Notification of Personnel Action (PS Form 50), Petitioner's Exhibit #2 . . . . . 16a

Appendix H: Memorandum of Understanding (MOU), January 5, 1996, Petitioner's Exhibit #3 . . . . . 17a

Appendix I: Official Notice of Assignment, October 12, 1996, Petitioner's Exhibit #4 . . . . . 20a

Appendix J: Defendant's Response to Plaintiff's Initial Request for Admission, Petitioner's Exhibit #5 . . . . . 22a

Appendix K: Petitioner's Formal Request for Schedule Change, July 8, 1997, Petitioner's Exhibit #6 . . . . . 25a

TABLE OF AUTHORITIES

CASES

Aviles v. Cornell Forge Co., 241 F.3d 589, 593 (7th Cir. 2001) 4, 8

Burlington N. & Santa Fe R.R. Co. v, White, 548 U.S ___ (2006) 2

Celotex Corp. v. Catrett, 477 U.S. 317 (1986) 6

Meritor Savings Bank v. Vinson, 477 U.S. 57 (1986) . . 9

Washington v. Ill. Dept. of Revenue, 420 F.3d 658 (7th Cir. 2005) . . . . . *passim*

Joseph W. Milder, v. Dept of Veteran Affairs, EEOC Appeal No. 01A11753 (August 1, 2002) 7

Lisa H. Selby v. United States Postal Service, EEOC Request No. 05A00046 (November 29, 2000) . 7

Statutes

28 U.S.C. 1254(1) 1

Title VII, *EEOC Compliance Manual Section 2* . . *passim*

OPINIONS BELOW

The Seventh Circuit Court of Appeals issued its unpublished order on October 11, 2006. *See* Appendix B. The Seventh Circuit Court of Appeals denied rehearing en banc on December 14, 2006. *See* Appendix A. The District Court. issued judgment on December 20, 2004. *See* Appendix C.

JURISDICTION

On October 11, 2006 The U.S. Court of Appeals for the Seventh Circuit upheld and affirmed the District Court decision. A timely petition for rehearing was denied by U.S. Court of Appeals on December 14, 2006, and a copy the order denying rehearing appears at Appendix A. This court has instant Jurisdiction, pursuant to 28 U.S.C. 1254(1) to review the final decision from the U.S. Court of Appeals.

STATUTORY PROVISION INVOLVED

The statutory provision involved is Title VII. The Petitioner asserts Respondent has violated Title VII through its acts of gender discrimination and retaliation.

STATEMENT OF THE CASE

This case presents five important questions regarding actionable adverse employment action. First, The U.S. Court of Appeals for the 7th Circuit decision, conflicts with a decision of the Supreme Court of the United States, in ignoring Thomas' (Petitioner) relevant facts, in *Burlington N. & Santa Fe R.R. Co. v, White*, 548 U.S. ___ (2006), U.S. Supreme Court Justice Breyer put it, "the significance of any given act of retaliation will often depend upon the particular circumstances, **Context matters**". Second, the Respondent (Defendant) falsified Official Personnel Records, enclosed as exhibit #2 and exhibit #4 is Thomas' direct evidence to support this claim. Third, Due to the falsification of these records the Respondent has ultimately caused a disregard for Thomas' seniority. Thomas seniority is essential and has an exchangeable value; to disregard Thomas seniority would certainly have a material adverse affect. In addition, because of the falsification of these records have certainly altered the terms and conditions of Thomas' employment to the extents of denial of Equal Employment Opportunities. Fourth, The Seventh Circuit is in conflict with it own precedent, whereas the Seventh Circuit ruled that filing a false report would violate the retaliation provision. However inasmuch to this ruling the Respondent falsified Official Personnel Records. Fifth, the Seventh Circuit is in conflict with Title VII, *EEOC Compliance Manual Section 2*; (Threshold issues).

Factual Background

On December 5, 1994, an EEO Settlement Agreement between Thomas and the defendant came into effect (exhibit #1). The terms of this settlement required that Thomas was to be placed into an assigned position, Tools & Parts Clerk (now named "Maintenance Support Clerk") within 30 days of this

settlement. The defendant failed to adhere to this requirement, instead issuing a Personnel Action, PS Form 50 (exhibit #2) 18 months later, with an effective date of May 25, 1996, featuring language inconsistent with the EEO settlement terms.

On May 20, 2002, Thomas filed the instant suit, alleging gender discrimination and retaliation in violation of Title VII. The Respondent Motion for Summary Judgment was based on an insufficient demonstration of harm, which is contrary to the text as well as the goals and purposes of Title VII.

Thomas' was discriminated against by reason of gender, when the Respondent failed to affect female employees within the same competitive level who are junior to him (less Maintenance Craft Seniority).

Pursuant to the National Agreement between the United States Postal Service and the American Postal Workers Union (APWU) requires that a bidding process shall be conducted prior to any assignments. The Respondent failed to grant or accomodate Thomas his preference pursuant to both the established National Agreement, and the Memorandum of Understanding (MOU) of January 5, 1996.

Pursuant to the Official Notice of Assignment exhibit #4, Thomas was wrongfully reassigned to a different shift via the Respondent falsifying this Official Personnel Record (an adverse employment action). **Exhibit #4** reflects that a bidding process was conducted, dated October 12, 1996, as oppose to the **5th question and answer of exhibit #5** reflects that there was no bidding process conducted during time period of January 1996 through February 1997. Please notice that the signatory for both exhibit #4 and exhibit #5 are the same.

After disregarding the terms of the EEO Settlement Agreement (1994), the defendant made fraudulent changes to Thomas' official personnel records (exhibits #2, and #4), linking this entire claim to Thomas' 1994 protected activity. In *Aviles v. Cornell Forge Co.*, 241 F.3d 589, 593 (7th Cir. 2001), the 7th Circuit court ruled that "filing false report would violate the retaliation provision. Inasmuch to this ruling, on June 3, 1996, the defendant issued a PS Form 50 stating that "In accordance with grievance settlement l-J-1159-93, seniority will be 10-03-92 as unassigned regular," even though this was inconsistent with the language of the EEO Settlement Agreement. This personnel action form, in combination with the falsification of Thomas' personnel records, changed the terms of the EEO Settlement Agreement and resulted in Thomas being classified as **an unassigned regular**.

"Unassigned Regular" is defined by the U.S. Postal Service as "employees whose positions have been abolished." By abolishing Thomas' position, his occupational seniority was eliminated, therefore causing a **tangible change** in the condition that produced a material employment disadvantage for his employment (movement to an undesirable shift). Despite Thomas' protests in regard to the actual terms of the EEO Settlement Agreement, the defendant took no corrective action. Thomas' change in classification to an unassigned regular allowed the defendant to move Thomas to an undesirable shift (tour). This adverse action, a direct violation of the EEO Settlement Agreement (exhibit #1) and falsification of Thomas' personnel records (exhibit #2, and #4) demonstrate the defendant's deliberate retaliation against Thomas.

Exhibit #3, the Memorandum of Understanding (MOU), is an "'agreement entered into between the American Postal

Workers Union (APWU), Chicago Local and the U.S. Postal Service to facilitate the placement of maintenance craft employees in the Chicago Center Processing & Distribution Center." The MOU does not segregate by or into occupational groups, such as Maintenance Mechanics or Maintenance Support Clerks, but applies to all Maintenance employees. Upon its implementation, it is required to be available to all Maintenance employees in the same manner as the APWU National Agreement.

To properly change an unassigned employee shift (tour), the MOU (exhibit #3) provides "employees will be allowed to exercise their preference for work schedule by craft seniority." which is referred to as the **bidding process**. Also, Section 2D of the MOU states that "positions not directly matched to established positions ... will be posted for bid." On October 12, 1996, the defendant issued Thomas a Notice of Assignment (exhibit 4), stating "Official personnel records indicate you failed to receive a position during the bidding process." However, since there had been no bidding process, as evidenced by Defendant Admission (exhibit #5), the Defendant failed to adhere to the MOU (exhibit #3).

On July 8, 1997, Thomas made a formal request (exhibit #6) to exercise his preference for work schedule by **craft seniority** in accordance with the MOU (exhibit #3), which was denied. However, Section 2D of the MOU states that the option of preference will be given to employees based on **craft seniority**. Even though Thomas' reclassification eliminated his occupational seniority, the MOU (which is the only established provision available to the defendant to be used to assign unassigned Maintenance employees) calls for the use of **craft seniority**, which is superior to occupational seniority. Therefore, when Section 2D was violated, it enabled the defendant to assign Thomas, who had craft

seniority, to a different shift (tour), while allowing the five women in his same competitive work level to retain their shift (tour).

REASONS FOR GRANTING THE PETITION

In *Washington v. Ill. Dept. of Revenue*, 420 F.3d 658 (7th Cir. 2005) states "changes in work hours will normally not sustain a retaliation claim." Even though the term "normally" leaves some room for interpretation, the notion that the defendant's adverse actions against Thomas consisted of a mere shift change serves to mischaracterize the facts as immaterial.

In the Defendant Circuit Rule 54 Statement holds that the actions taken against the Plaintiff do not qualify as "materially adverse" in regards to his claim of discrimination. While in *Washington v. Ill. Dept. Of Revenue*, 420 F.3d 658 (7th Cir. 2005) states "material is one of those protean words that resist further definition. This holds open some potential to say that an act that would be immaterial in some situations is material in others". The point is that only a careful sifting of the facts will determine what constitute adverse employment action, even where economic factors and title remain the same.

Per *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986), a "disputed issue of fact is 'genuine' if the evidence is such that a reasonable fact finder could find in favor of the non-moving party ... A fact is 'material' if it has the potential to affect the outcome of the case." The falsification of official personnel records (by the defendant) is a fact that has the potential to affect the outcome of this particular case, and so should be considered material. Through preponderance of evidence (enclosed) and in according to the facts in these exhibits, it's clear that the defendant engaged in actions of Retaliatory

Discrimination through its 1) Disregard for Thomas' EEO Settlement Agreement, 2) Falsification of Thomas' official personnel records, 3) Disregard for the established MOU, and 4) Denial of Thomas' seniority rights.

In *Washington v. Ill. Dept. Of Revenue*, 420 F.3d 658 (7th Cir. 2005) a case decided by the 7th Circuit court allowed for an exception acknowledging the fact that Washington employer exploited her vulnerability, and the fact that she had to used her leave (a benefit of employment) in order to care for her son who had Downs syndrome. Comparing this case to the outcome/decision of *Washington*, the Petitioner requests this court to consider that denying Thomas of his seniority rights (a benefit of employment) is a denial of employment benefit (material adverse action). Consider On October 12, 1996 the Defendant issued Thomas a Notice of Assignment (exhibit 4), despite this falsified, improper notice, the Defendant exploited Thomas vulnerability when the Defendant knew that Thomas had no other choice but to obey the Notice of Assignment or risk losing job for insubordination, or failure to report to assigned shift (tour).

Per *Joseph W. Milder, v. Dept of Veteran Affairs*, EEOC Appeal No. 01A11753 (August 1, 2002): states "Clearly, seniority rights are a benefit of employment." Also, the Remedial Action contained in *Lisa H. Selby v. United States Postal Service*, EEOC Request No. 05A00046 (November 29, 2000), the EEOC ordered the defendant to "provide complainant with back pay... and all other attendant employment benefits (including seniority rights)." These two rulings clearly define seniority rights as a benefit of employment. Therefore, when this benefit (seniority rights) is denied to an employee, the result has an adverse affect which is material.

Another instance that demonstrates the material nature of the defendant's actions has to do with discrimination. *Per Washington v. Ill. Dept. Of Revenue*, 420 .F.3d 658 (7th Cir. 2005), "'discrimination' entails a requirement that the employer's challenged action would have been material to a reasonable employee, which means that the same requirement applies to §2000e-3(a), the anti-retaliation clause, as well as other provisions in Title VII that use the word 'discrimination'."

Whereas, if falsification of records denied Thomas his seniority rights, if seniority rights by definition are a benefit of employment, and if a reasonable person would consider denial of seniority benefits to be "material" then the defendant's challenged action in this case should be evaluated in terms of Retaliatory Discrimination.

1. With the help of **exhibit #2** and **exhibit #4**, clearly demonstrates that the shift change resulted from the falsification of the Official Notice of Assignment exhibit #4, which could certainly be construed by fact-finders as a discriminatory, retaliatory, and as an actionable adverse employment action. *In Aviles v. Cornell Forge Co.*, 241 F.3d 589, 593 (7th Cir. 2001), the 7th Circuit ruled that filing a false report would violate the retaliation provision. However inasmuch to this ruling the Respondent falsified Official Personnel Records.

2. Based on the facts, this case is not predicated on a mere schedule change, but includes disregard for the EEO Settlement Agreement, falsification of official personnel records, disregard for the established MOU exhibit #3, denial of Thomas' seniority rights (a material adverse employment action), and are collectively acts of Retaliatory Discrimination, which falls under the anti-

discrimination clause Title of the Civil Rights Act. Thereby the Defendant actions do not rise to the level of a legitimate non-discriminatory business decision, and summary judgment is inappropriate.

3. In ***Meritor Savings Bank v. Vinson,*** 477 U.S. 57 (1986), the U.S. Supreme Court rejected the notion that Title VII only applied to economic or tangible barriers. The Court stated that "*the language of Title VII is not limited to economic or tangible discrimination.*" Only a careful sifting of the facts will determine what constitute adverse employment action, even where economic factors and title remain the same.

4. Pursuant to the *EEOC Compliance Manual Section 2*; (Threshold Issues) Title VII prohibits discrimination related to job decision, employment practices, or other terms, condition, or privileges of employment based on an individual's protected status. A specific issue of this type that a charging party may raise includes, but is *not limited to*, is an undesirable reassignment.

5. It apparently clear that the Supreme Court of the United States ruling in the *Meritor Saving Bank v. Vinson* case is in compliance with Title VII, and the *EEOC Compliance Manual Section 2.*; (Threshold Issues) .

CONCLUSION

For the following reasons, this court should vacate the U.S. Court of Appeals for the Seventh Circuit decision and grant the petition for a writ of certiorari.

1. Because the U.S. Court of Appeals for the 7th Circuit decision, conflicts with a decision of the Supreme Court of the United States.

2. Because the U.S. Court of Appeals for the 7th Circuit decision is not in compliance with Title VII, *EEOC Compliance Manual Section 2*; (Threshold issues).

3. If the decision of the Seventh Circuit is allowed then the precedent of this court, and Title VII, *EEOC Compliance Manual Section 2*; (Threshold issues) serves no purpose.

For the foregoing reasons, this court should remand this case to the United States District Court for the Northern District of Illinois, Eastern Division for trial on the merits.

Respectfully submitted,

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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
CHICAGO, ILLINOIS 60604

No. 05-1454
[Filed December 14, 2006]

MICHAEL A. THOMAS)
Plaintiff-Appellant,)
)
v.)
)
JOHN E. POTTER,)
Defendant-Appellee.)

Appeal from the United States District Court
for the Northern District of Illinois,
Eastern Division.

No. 02 C 3576
James B. Zagel, *Judge*

Before Hon. RICHARD A. POSNER, *Circuit Judge*,
Hon. DIANE P. WOOD, *Circuit Judge*
Hon. TERENCE T. EVANS, *Circuit Judge*

ORDER

Plaintiff-Appellant filed a petition for rehearing and rehearing en banc on November 27, 2006. No judge in regular active service has requested a vote on the petition for rehearing en banc and all members of the original panel have voted to DENY rehearing. Accordingly,

IT IS ORDERED that the petition for rehearing be, and the same is hereby, DENIED.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
CHICAGO, ILLINOIS 60604

No. 05-1454
[Filed October 11, 2006]

MICHAEL A. THOMAS)
Plaintiff-Appellant,)
)
v.)
)
JOHN E. POTTER,)
Defendant-Appellee.)
)

Appeal from the United States District Court
for the Northern District of Illinois,
Eastern Division.

No. 02 C 3576
James B. Zagel, *Judge*

Before Hon. RICHARD A. POSNER, *Circuit Judge*,
Hon. DIANE P. WOOD, *Circuit Judge*
Hon. TERENCE T. EVANS, *Circuit Judge*

ORDER

Michael Thomas brought suit under Title VII, alleging that the United States Postal Service retaliated and discriminated against him based on his gender when it changed his shift schedule. The district court granted summary judgment for the Postal Service, concluding that a mere change in shift schedule which does not materially affect the terms of employment cannot constitute an adverse employment action. We affirmed in *Thomas v. Potter,* No. 05-1454, 2005 WL 1994328 (7th Cir. Aug. 18, 2005). The Supreme Court subsequently held in *Burlington Northern & Santa Re Railway Co. v. White,* 548 U.S. ___, 126 S.Ct. 2405 (2006), that the anti-retaliation provision of Title VII is not limited to actions that materially affect the terms and conditions of employment, but rather "an employer can effectively retaliate against an employee by taking actions not directly related to his employment or by causing him harm *outside* the workplace." *Id.* at 2412-13 (italics in original). In so holding, the Court noted with approval that other circuits, including this one, have declined to limit the scope of the anti-retaliation provision. *See id.* at 2410-11 (citing *Washington v. Illinois Department of Revenue,* 420 F.3d 658, 662 (7th Cir. 2005)). Shortly thereafter, the Supreme Court granted Thomas' petition for a writ of certiorari and remanded the case to this court for further consideration in light of the decision in *Burlington Northern.* We invited the parties to comment on the effect *of Burlington Northern.* On consideration *of Burlington Northern* and the parties' comments, we again affirm the district court's judgment.

The proper inquiry under *Burlington Northern* and our *pre-Burlington Northern* case law is whether a reasonable employee would have found the challenged retaliatory act materially adverse in that it would dissuade a reasonable

worker from filing a charge, regardless of whether the act is employment-related. *Burlington Northern,* 126 S.Ct. at 2414-16; *Washington,* 420 F.3d at 661-63. Here, the purported retaliatory act--the change to Thomas's shift schedule--is directly related to his employment. Therefore *Burlington Northern* does not alter the outcome of this case, unless there was intentional, non-employment-related harm to Thomas from the shift change. *Burlington Northern,* 126 S.Ct. at 2415-16 (citing *Washington,* 420 F.3d at 662). In *Washington,* we concluded that a jury could find that Washington's employer retaliated against her because it exploited her "unique vulnerability" by changing her work schedule knowing that she would be required to take two hours of leave per day to care for her disabled son. *Washington,* 420 F.3d at 662-63.

However, unlike in *Washington,* Thomas does not assert--nor does the record contain any evidence--that he had a unique vulnerability that the Postal Service knew about and sought to exploit by changing his shift schedule. Thomas's assertion that the shift change was undesirable or inconvenient to him does not rise to the level of harm sufficiently serious to "dissuade[ ] a reasonable worker from making or supporting a charge of discrimination." *Burlington Northern,* 126 S.Ct. at 2415 (quoting *Washington,* 420 F.3d at 662). In any event, Thomas identifies no evidence that the Postal Service imposed the shift change with the knowledge or intention that Thomas would consider it undesirable or inconvenient. Accordingly, we cannot say that the district court erred in concluding that Thomas failed to demonstrate that the challenged retaliatory act had a materially adverse effect on him.

AFFIRMED.

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
CHICAGO, ILLINOIS 60604

No. 05-1454
[Filed October 24, 2005]

MICHAEL A. THOMAS)
Plaintiff-Appellant,)
)
v.)
)
JOHN E. POTTER,)
Defendant-Appellee.)
)

Appeal from the United States District Court
for the Northern District of Illinois,
Eastern Division.

No. 02 C 3576
James B. Zagel, *Judge*

Before Hon. RICHARD A. POSNER, *Circuit Judge,*
Hon. DIANE P. WOOD, *Circuit Judge*
Hon. TERRENCE T. EVANS, *Circuit Judge*

ORDER

Plaintiff-appellant filed a petition for rehearing en banc on September 30, 2005. No judge in regular active service has requested a vote on the petition for rehearing en banc, and all members of the original panel have voted to DENY rehearing. Accordingly,

IT IS ORDERED that the petition for rehearing be, and the same is hereby, DENIED.

APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
CHICAGO, ILLINOIS 60604

No. 05-1454
[Submitted August 18, 2005*]
[Filed August 18, 2005]

MICHAEL A. THOMAS)
Plaintiff-Appellant,)
)
v.)
)
JOHN E. POTTER,)
Defendant-Appellee.)

Appeal from the United States District Court
for the Northern District of Illinois,
Eastern Division.

No. 02 C 3576
James B. Zagel, *Judge*

* After an examination of the briefs and the record, we have concluded that oral argument is unnecessary. Thus, the appeal is submitted on the briefs and the record. See Fed. R. App. P. 34(a)(2).

Before Hon. RICHARD A. POSNER, *Circuit Judge,*
Hon. DIANE P. WOOD, *Circuit Judge*
Hon. TERENCE T. EVANS, *Circuit Judge*

ORDER

Michael Thomas brought this suit under Title VII, alleging that the United States Postal Service retaliated and discriminated against him based on his gender when it changed his shift schedule. The district court granted summary judgment for the Postal Service, concluding that a mere change in shift schedules which does not materially affect the terms of employment cannot constitute an adverse employment action.

APPENDIX E

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 02 C 3576
[Filed December 20, 2004]

MICHAEL A. THOMAS)
)
v.)
)
JOHN E. POTTER)
)

JUDGMENT IN A CIVIL CASE

☐ Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury rendered its verdict.

■ Decision by Court. This action came to hearing before the Court. The issues have been heard and a decision has been rendered.

IT IS HEREBY ORDERED AND ADJUDGED that summary judgment is entered in favor of defendant and against plaintiff, Michael Thomas. Plaintiff take nothing from the defendant.

Docketed DEC 20 2004

Michael W. Dobbins, Clerk of Court

Date: 12/19/2004 /s/
Donald Walker, Deputy Clerk

On May 20, 2002, Plaintiff filed the instant suit, alleging gender discrimination and retaliation in violation of Title VII. Defendant now moves for summary judgment on the grounds that Plaintiff cannot establish *a prima facie* case for discrimination or retaliation. In the absence of direct evidence of discrimination and/or retaliation, as is the case here, the plaintiff must establish a *prima facie* case for each. *McDonnell Douglas Corp. v. Green,* 411 U.S. 792 (1973). To establish *a prima facie* case for discrimination and/or retaliation, the plaintiff must show that he suffered an adverse employment action. *See Id; Hilt-Dyson v. Chicago,* 282 F.3d 456, 465 (7th Cir. 2002). Not everything that makes an employee unhappy is an actionable adverse action. *Smart v. Ball State Univ.,* 89 F.3d 437, 441 (7th Cir, 1996). Only tangible employment actions that cause a significant change in employment status constitute actionable adverse actions. *Burlington Indus. v. Ellerth,* 524 U.S. 742, 753 (1998). Examples of actionable adverse actions include hiring, firing, failing to promote, reassigning with significantly different responsibilities, and a decision causing a significant change in benefits, *Id.* The action must cause a materially adverse change in the terms and conditions of employment that is "more disruptive than a mere inconvenience or an alteration of job responsibilities." *Crady v. Liberty Nat'l Bank & Trust Co.,* 993 F.2d 132, 136 (7th Cir. 1993).

Plaintiff alleges that Defendant's decision to move him from the day to the evening shift constituted an adverse employment action. I must disagree. In *Grube v. Lau Indus.,*

257 F.3d 723,728 (7th Cir. 2001), the Seventh Circuit held that a decision to change an employee's work shift, without a change in the employee's title, pay or responsibilities, does not rise to the level of an adverse employment action. Since Plaintiff has not alleged an actionable adverse employment action, I find that summary judgment on his claim is appropriate.[1]

Defendant's Motion for Summary Judgment is GRANTED.

---

[1] Because summary judgment is appropriate on these grounds, I need not address Defendant's other arguments.

APPENDIX F

[EXHIBIT # 1]

EQUAL EMPLOYMENT OPPORTUNITY SETTLEMENT AGREEMENT

CHICAGO DISTRICT OFFICE
[Filed December 5, 1994]

Michael A. Thomas	)
Complainant	)
	)
vs.	)
	)
United States Postal Service	)
Respondent	)
	)

In full and complete resolution of the Complaint herein; the undersigned parties agree as follows;

1. All parties agree that it is in the best interests of effective functioning of the administrative Equal Employment Opportunity procedures to keep confidential the terms and conditions of this Settlement. The complainant, as a term and condition of Settlement, agrees to keep confidential the information within and not to disclose said information to any third party other than legal counsel.

2. By entry into this Settlement Agreement, the United States Postal Service, its officers, agents, and/or employees in no way admit to any wrongdoing, liability to or discrimination against the Complainant. The Complainant agrees that this Agreement shall not be construed as an admission of wrongdoing, liability or discrimination by the United States Postal Service, its officers, agents and/or employees in this or any other proceeding or litigation.

3. It is understood by the undersigned that this Agreement is in full and complete settlement of all outstanding administrative EEO complaints or appeals, in this or any other forum, filed by the below named Complainant or on his behalf relating to any matters that occurred prior to the execution of this Settlement Agreement. The below named Complainant agrees to voluntarily withdraw any outstanding administrative complaint or appeal, and to request that any grievance be withdrawn. These include, but are not limited to, case I-J-1159-93 . It is understood that settlement is contingent upon those complaints, appeals, or grievances being withdrawn. It is further stipulated that the withdrawals are made without any threat, coercion, intimidation, promise, or inducement other than the terms set forth in the Agreement.

4. The Complainant (Michael A. Thomas) shall be placed in the position of Tools and Parts Clerk, PS Level 5, Step O. The Complainant will be placed in the position of Tools and Parts Clerk; S PI 36, PS Level 5, Step O, no later than thirty (30) days from the date the Agreement is signed by all parties involved. Seniority for Preferred Assignments will be October 3, 1992.

5. It is agreed that should the Postal Service fail to adhere to the stipulations contained in this agreement for any reason not attributable to acts or conduct of the Complainant, the

Complainant may request that the terms of the settlement agreement be specifically implemented or alternatively, that the complaint be reinstated for further processing from the point processing ceased under the terms of the settlement agreement.

6. Further, this Settlement Agreement resolves all of the issues related to the Complainants Complaint, No. _-J-1159-93_, against the United States Postal Service.

I MICHAEL A. THOMAS, Michael A. Thomas have read, and understand the conditions and restrictions set forth in the above agreement. I am mentally and physically fit so as to be able to understand this agreement in its entirety. I freely sign this agreement without reservation, duress, or coercion on the part of anyone.

/s/Michael Thomas 12-5-94	/s/Tyrone Brinson 12/5/94
Complainant Date	Complainant's Representative

/s/Ronald Pope 12-5-94
Agency Representative Date

APPENDIX G

[EXHIBIT #2]

NOTIFICATION of PERSONNEL ACTION
U.S. Postal Service

01) Effective Date 5-25-1996

02) Social Security Number xxx-xx-5474

84) **Remarks**
IN ACCORDANCE WITH GRIEVANCE SETTLEMENT J-J-1159-93
SENIORITY WILL BE 10-03-92 AS UNASSIGNED REGULAR
JOB 7986969 IS INCUMBENCY ONLY
DOCUMENTATION RECEIVED AND IN MAINTENANCE FIILES
PC 6-3-96

85) **Authorization**
JOHN T. WEEKER, VICE PRESIDENT
AREA OPERATIONS-GREAT LAKES

86) Processed Date 06-03-1996
87) Personnel Office ID TB22
88) OPF Location CHICAGO PROC/DIST CTR

PS Form 50, March 1990 (Exception to Standard Form 50)
2 - OPF COPY

APPENDIX H

[EXHIBIT #3]

MEMORANDUM OF UNDERSTANDING APWU-MAINTENANCE STAFFING

The following agreement is entered into between the American Postal Workers Union, Chicago Local, and the United States Postal Service to facilitate the placement of maintenance craft employees in the Chicago Center Processing and Distribution Center.

1) Employees holding positions in the Old Chicago P & D Center which are perfect matches to positions established at the Chicago Central P & D Center, will be reassigned to the Chicago Central position. Seniority tie breakers will be as established in the National Agreement.

2) Positions not directly matched to established positions at the Old Chicago P & D Center will be posted for bid as follows:

a. To all affected qualified employees only, within the occupation group of the posted position.

b. Residual positions shall be filled by means of promotion of the affected employees, through the appropriate promotion eligibility register.

c. If after completion of the above process residual vacancies exist, consideration will be given to affected

higher level qualified employees who have previously submitted a written request for assignment to a lower level.

d. **Remaining affected employees will be assigned to detail duties as unassigned employees. Employees will be allowed to exercise their preferences for work schedules by craft seniority. An equal number of preference eligibles, to the number of non veterans obtaining positions via items 1 and 2 above, shall remain in their corresponding section in the new Chicago Central Facility unless that section is eliminated.**

Employees assigned to duties under this provision will retain their current job title classification, level and grade. Positions assigned under this section will be the incumbent only position. This will apply for each employee assigned under this section until the employee retires, separates voluntarily or involuntarily, or voluntarily bids to a lower level position. The position will be reverted upon being vacated by above assigned employee. Vacation selection and overtime assignments for employees assigned duties under this provision will be made in accordance with the section to which the employees are assigned in the Chicago Central Facility.

The parties agree that the effective date of bids under this agreement shall be the date of reassignment to the New Chicago Central Facility.

/s/ 1-5-96
Herby Weathers, Jr. Date
General President
American Postal Workers Union
Chicago Local

/s/ 1-5-96
David C. Fields, Sr. Date
Sr. Plant Manager
Chicago P & DC

APPENDIX I

[EXHIBIT #4]

MAINTENANCE MANAGER
CHICAGO PROCESSING & DISTRIBUTION CENTER

UNITED STATES POSTAL SERVICE

Thomas, M.
5474
Maintenance Support Clerk PS-5

Official personnel records indicates you failed to receive a position during the bidding process. Accordingly you are now considered an unassigned regular employee.

This notice serves as official notification of such and advises of your new assignment within the Central Facility.

Assignment:	Maintenance Support Clerk PS-5
Work Schedule:	Tour 3
Non-Schedule Days:	THU/FRI

The effective date of your new assignment is October 12, 1996.

/s/Charles S. May
for John U. Garcia

FJR/fjr

cc: Herby Weathers, Jr.
Personnel

APPENDIX J

[EXHIBIT #5]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Case No. 02 C 3576

MICHAEL A. THOMAS
Plaintiff

v.

JOHN E. POTTER,
POSTMASTER GENERAL - -
UNITED STATES POSTAL SERVICE,
Defendant

DEFENDANT'S RESPONSE TO
PLAINTIFF'S INITIAL REQUESTS FOR ADMISSION

COMES NOW the Defendant, John E. Potter, Postmaster General, United States Postal Service, and respectfully submits its Response to Plaintiff's Initial Requests for Admission.

1. Plaintiff PS Form 50 (exhibit #14) states that "in accordance with grievance settlement 1-J-1159-93 seniority

will be 10-03-92 as unassigned regular. However, are there any stipulation of becoming unassigned regular agree upon pursuant to the Plaintiff EEO Settlement Agreement of December 5, 1994 (exhibit #13)?

ANSWER: The settlement agreement does not state that plaintiff will be designated an unassigned regular. Plaintiff was designated as "unassigned" because there were no positions available when he was placed into the job pursuant to the EEO settlement agreement.

2. Pursuant to section 2D of the MOU (exhibit #1) were there any unassigned maintenance employees that was allowed to excise their preference by craft seniority?

ANSWER: No maintenance employees were allowed to exercise options under 2D of the MOU dated 1/5/96.

3. Were the five aforementioned female listed in this complaint, classified as an unassigned employee during the period of January 1996 through June 1999?

ANSWER: The five female employees identified by Plaintiff in his Complaint were listed as unassigned employees during the subject time period.

4. In regard to the five aforementioned female employees, did their tour change?

ANSWER: Their tours did not change during the time period identified in number 3 above.

5. Was there a bidding process conducted for the unassigned Maintenance Support Clerk during the period of January 1996 through February 1997?

ANSWER: There was no bidding process during the subject time period.

6. Prior to the Plaintiff receiving his official Notice of Assignment (exhibit #3) was the Plaintiff afforded an opportunity to exercise his preference?

ANSWER: Neither plaintiff or any other maintenance support clerk was allowed to exercise their preferences.

I declare under penalty of perjury, that the foregoing information contained in Defendant's responses to Plaintiff's Initial Requests For Admission is true and accurate to the best of my knowledge.

/s/
Charles E. May
Maintenance Manager
Chicago Processing &
Distribution Center
United States Postal Service

APPENDIX K

[EXHIBIT #6]

MICHAEL A. THOMAS
17421 LOOMIS STREET
EAST HAZEL CREST, IL 60429
(708) 798-4147

JOHN U. GARCIA
MANAGER, MAINTENANCE
433 W. HARRISON
CHICAGO, IL 60607

JULY 8,1997

As per ours conversation dated July 7,1997 that indicated a possible settlement agreement.

SETTLEMENT AGREEMENT

In accordance with the Memorandum of Understanding an agreement made between the American Postal Worker Union (APWU) and the U. S. Postal Service dated Jan 5, 1996. Unassigned employees will be allowed to exercise their preference for work schedules by craft seniority.

Appellant will be allowed to exercise his preference for work schedule by maintenance craft seniority.

The Agency agree to temporarily change Appellant's tour, from tour 3, Thursday and Friday RDO to tour 1, Monday and Tuesday RDO. This temporarily change will remain in effect until after the final out come of the appellant selection

for preference for work schedule by maintenance craft seniority.

After selection for work schedule has been granted, appellant will remain in that assignment as an unassigned regular, incumbency only.

Enclosure: Memorandum of Understanding, APWU-Maintenance Staffing dated Jan 5, 1996.

Respectfully submitted

/s/_____
Michael A. Thomas

MAINTENANCE
JUL 8 324 PM '97

(2)

No. 06-1514

FILED
JUL 18 2007
OFFICE OF THE CLERK
SUPREME COURT, U.S.

In the Supreme Court of the United States

MICHAEL A. THOMAS, *PRO SE*,
Petitioner,

v.

JOHN E. POTTER, Postmaster General,
United States Postal Service,
Respondent.

On Petition for a Rehearing to the United States Court of Appeals for the Seventh Circuit

PETITION FOR REHEARING

MICHAEL A. THOMAS
Pro Se
17421 LOOMIS STREET
EAST HAZEL CREST, IL 60429
(708) 705-4407

July 18, 2007

Becker Gallagher · Cincinnati, OH · Washington, D.C. · 800.890.5001

QUESTION PRESENTED FOR REVIEW

This case presents two conflicting decisions made by this court. Petitioner respectfully submits and asks this court to give clarification as to why this court deviated from its original decision, whereby consideration by the full court is therefore necessary to secure and maintain uniformity of this court original decision of June 30 2006.

TABLE OF CONTENTS

QUESTIONS PRESENTED i

TABLE OF CONTENTS ii

INDEX TO APPENDICES iii

TABLE OF AUTHORITIES iv

OPINIONS BELOW 1

JURISDICTION 1

STATUTORY PROVISION INVOLVED 1

GROUNDS FOR REHEARING 2

REASONS FOR GRANTING THE PETITION 3

CONCLUSION 5

INDEX TO APPENDICES

Appendix (A): Order on Appeal from U.S. Court of Appeals for the 7th Circuit Affirmed October 11, 2006. . . . . 1a

Appendix (B): Order on rehearing en banc, denied December 14, 2006. . . . . 4a

Appendix (C): Official Notice of Assignment, October 12, 1996, Petitioner's Exhibit #4 . . . . . 6a

Appendix (D): Defendant's Reply to Plaintiff's Request for Admission, Petitioner's Exhibit #5 . . . . . 8a

TABLE OF AUTHORITIES

CASES

Aviles v. Cornell Forge Co.,
241 F. 3d 589 (7th Cir. 2001) 3

Burlington N. & Santa Fe R.R. Co. v. White,
548 U.S ____ (2006) 2, 3

Celotex Corp. v. Catrett,
477 U.S. 317 (1986) 4

Washington v. Ill. Dept. of Revenue,
420 F.3d 658 (7th Cir. 2005) 4

OPINIONS BELOW

The Seventh Circuit Court of Appeals issued its unpublished order on October 11, 2006. *See* Appendix A. The Seventh Circuit Court of Appeals denied rehearing en banc on December 14, 2006. *See* Appendix B.

JURISDICTION

On October 11, 2006 The U.S. Court of Appeals for the Seventh Circuit upheld and affirmed the District Court decision. A timely petition for rehearing was denied by U.S. Court of Appeals on December 14, 2006, and a copy the order denying rehearing appears at Appendix B. This court has instant Jurisdiction, pursuant to 28 U.S.C. 1254(1) to review the final decision from the U.S. Court of Appeals.

STATUTORY PROVISION INVOLVED

The statutory provision involved is Title VII. The Petitioner asserts Respondent has violated Title VII through its acts of gender discrimination and retaliation.

GROUNDS FOR REHEARING

On June 30, 2006 this court granted the Petition for a Wri of Certiorari, vacated the judgment, and remanded this case, case number 05-1267 to the United States Court of Appeals for the Seventh Circuit for further consideration in light of *Burlington Northern and Santa Fe Railway v. White*, 548 U.S. __ (2006).

Despite the case number changing, the facts and evidence(s) in this case has not change on June 25, 2007 (one year later) this court denied the Petition for a Writ of Certiorari, whereas there are now two decisions for this one case. Therefore in order to maintain uniformity its exceptional importance to give clarification.

Factual Background

On October 11, 2006 the United States Court of Appeals for the Seventh Circuit denied reconsideration and affirmed their previous decision stating "*Burlington Northern* does not alter the outcome of the case, unless there was intentional, non-employment related harm to Thomas from the shift change".

Pertinent Fact(s)

Pursuant to the National Agreement between the United States Postal Service and the American Postal Workers Union (APWU) requires that a bidding process shall be conducted, senior qualified prior to any assignments. The Respondent failed to grant or accommodate Thomas his preference pursuant to the established National Agreement.

Pursuant to the Official Notice of Assignment exhibit #4, Thomas was **intentionally** and **wrongfully** reassigned to a different shift via the Respondent denying Thomas his seniority rights, and falsifying Official Personnel Records, which resulted in a significant change in benefits (an adverse employment action).

Year to date Petitioner Official Personnel Records remains falsified.

Exhibit #4 an falsified action reflects that A bidding process was conducted, dated October 12, 1996, as oppose to the **5th question and answer of exhibit #5** reflects that there was no bidding process conducted during time period of January 1996 through February 1997. Please notice that the signatory for both exhibit #4 and exhibit #5 are the same.

Exhibit #4 clearly demonstrates that the shift change resulted from the falsification of the Official Notice of Assignment, which could certainly be construed by fact-finders as a discriminatory, retaliatory, and as an actionable adverse employment action. *In Aviles v. Cornell Forge Co.*, 241 F.3d 589, 593 (7th Cir. 2001), the 7th Circuit ruled that filing a false report would violate the retaliation provision. However inasmuch to this ruling the Respondent falsified Official Personnel Records.

REASONS FOR GRANTING THE PETITON

Burlington N. & Santa Fe R.R. Co. v. White, 548 U.S. ____, (2006), U.S. Supreme Court Justice Breyer put it, "the significance of any given act of retaliation will often depend upon the particular circumstances, **Context matters**".

In *Washington v. Ill. Dept. of Revenue*, 420 F.3d 658 (7th Cir. 2005) states "changes in work hours will normally not sustain a retaliation claim." Even though the term "normally" leaves some room for interpretation, the notion that the defendant's adverse actions against Thomas consisted of a mere shift change serves to mischaracterize the facts as immaterial.

In the Defendant Circuit Rule 54 Statement holds that the actions taken against the Plaintiff do not qualify as "materially adverse" in regards to his claim of discrimination. While in *Washington v. Ill. Dept. of Revenue*, 420 F.3d 658 (7th Cir. 2005) states "material is one of those protean words that resist further definition. This holds open some potential to say that an act that would be immaterial in some situations is material in others". The point is that only a careful sifting of the facts will determine what constitute adverse employment action, even where economic factors and title remain the same.

Per *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986), a "disputed issue of fact is 'genuine' if the evidence is such that a reasonable fact finder could find in favor of the non-moving party ... A fact is "material" if it has the potential to affect the outcome of the case." The falsification of official personnel records (by the defendant) is a fact that has the potential to affect the outcome of this particular case, and so should be considered material. Through preponderance of evidence (enclosed) and in according to the facts in these exhibits, it's clear that the defendant engaged in actions of Retaliatory Discrimination through its 1) Falsification of Thomas' official personnel records, and 2) Denial of Thomas' seniority rights.

Another instance that demonstrates the material nature of the defendant's actions has to do with discrimination. Per *Washington v. Ill. Dept. of Revenue*, 420 F.3d 658 (7th Cir.

2005), "'discrimination' entails a requirement that the employer's challenged action would have been material to a reasonable employee, which means that the same requirement applies to §2000e-3(a), the anti-retaliation clause, as well as other provisions in Title VII that use the word 'discrimination'." Whereas, if falsification of records denied Thomas his seniority rights, if seniority rights by definition are a benefit of employment, and if a reasonable person would consider denial of seniority benefits to be "material," then the defendant's challenged action in this case should be evaluated in terms of Retaliatory Discrimination.

CONCLUSION

Base on the facts, this case is not predicated on a mere schedule change, but includes falsification of Petitioner Official Personnel Records, and denial of Petitioner seniority rights, collectively these are acts of Retaliatory Discrimination, which falls under the anti-discrimination clause Title of the Civil Rights Act. Thereby the Defendant actions do not rise to level of a legitimate Non-discriminatory business decision and summary judgment is inappropriate. For these reasons, this court should vacate the Seventh Circuit Court of Appeals' decision and remand this case to the District Court for trial on the merits

Petitioner respectfully submits to this court to affirm its historic mandate, "Equal Justice under Law".

Michael A. Thomas
Pro Se Litigant
17421 Loomis Street
East Hazel Crest, IL 60429
(708) 705-4407

CERTIFICATION

The foregoing is restricted to the grounds specified in 44.2 S. Ct. R. and it is presented in good faith and not for delay.

Michael A. Thomas /PD

Michael A. Thomas
Pro Se

APPENDIX

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
CHICAGO, ILLINOIS 60604

No. 05-1454
[Filed October 11, 2006]

MICHAEL A. THOMAS *Plaintiff-Appellant*,	)
v.	)
JOHN E. POTTER, *Defendant-Appellee*.	)

Appeal from the United States District Court
for the Northern District of Illinois,
Eastern Division.

No. 02 C 3576
James B. Zagel, *Judge*

Before Hon. RICHARD A. POSNER, *Circuit Judge*,
Hon. DIANE P. WOOD, *Circuit Judge*
Hon. TERENCE T. EVANS, *Circuit Judge*

ORDER

Michael Thomas brought suit under Title VII, alleging that the United States Postal Service retaliated and discriminated against him based on his gender when it changed his shift schedule. The district court granted summary judgment for the Postal Service, concluding that a mere change in shift schedule which does not materially affect the terms of employment cannot constitute an adverse employment action. We affirmed in *Thomas v. Potter,* No. 05-1454, 2005 WL 1994328 (7th Cir. Aug. 18, 2005). The Supreme Court subsequently held in *Burlington Northern & Santa Re Railway Co. v. White,* 548 U.S. ___, 126 S.Ct. 2405 (2006), that the anti-retaliation provision of Title VII is not limited to actions that materially affect the terms and conditions of employment, but rather "an employer can effectively retaliate against an employee by taking actions not directly related to his employment or by causing him harm *outside* the workplace." *Id.* at 2412-13 (italics in original). In so holding, the Court noted with approval that other circuits, including this one, have declined to limit the scope of the anti-retaliation provision. *See id.* at 2410-11 (citing *Washington v. Illinois Department of Revenue,* 420 F.3d 658, 662 (7th Cir. 2005)). Shortly thereafter, the Supreme Court granted Thomas' petition for a writ of certiorari and remanded the case to this court for further consideration in light of the decision in *Burlington Northern.* We invited the parties to comment on the effect *of Burlington Northern.* On consideration *of Burlington Northern* and the parties' comments, we again affirm the district court's judgment.

The proper inquiry under *Burlington Northern* and our *pre-Burlington Northern* case law is whether a reasonable employee would have found the challenged retaliatory act materially adverse in that it would dissuade a reasonable

worker from filing a charge, regardless of whether the act is employment-related. *Burlington Northern,* 126 S.Ct. at 2414-16; *Washington,* 420 F.3d at 661-63. Here, the purported retaliatory act--the change to Thomas's shift schedule–is directly related to his employment. Therefore *Burlington Northern* does not alter the outcome of this case, unless there was intentional, non-employment-related harm to Thomas from the shift change. *Burlington Northern,* 126 S.Ct. at 2415-16 (citing *Washington,* 420 F.3d at 662). In *Washington,* we concluded that a jury could find that Washington's employer retaliated against her because it exploited her "unique vulnerability" by changing her work schedule knowing that she would be required to take two hours of leave per day to care for her disabled son. *Washington,* 420 F.3d at 662-63.

However, unlike in *Washington,* Thomas does not assert--nor does the record contain any evidence--that he had a unique vulnerability that the Postal Service knew about and sought to exploit by changing his shift schedule. Thomas's assertion that the shift change was undesirable or inconvenient to him does not rise to the level of harm sufficiently serious to "dissuade[ ] a reasonable worker from making or supporting a charge of discrimination." *Burlington Northern,* 126 S.Ct. at 2415 (quoting *Washington,* 420 F.3d at 662). In any event, Thomas identifies no evidence that the Postal Service imposed the shift change with the knowledge or intention that Thomas would consider it undesirable or inconvenient. Accordingly, we cannot say that the district court erred in concluding that Thomas failed to demonstrate that the challenged retaliatory act had a materially adverse effect on him.

AFFIRMED.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
CHICAGO, ILLINOIS 60604

No. 05-1454
[Filed December 14, 2006]

MICHAEL A. THOMAS)
Plaintiff-Appellant,)
)
v.)
)
JOHN E. POTTER,)
Defendant-Appellee.)
)

Appeal from the United States District Court
for the Northern District of Illinois,
Eastern Division.

No. 02 C 3576
James B. Zagel, *Judge*

Before Hon. RICHARD A. POSNER, *Circuit Judge,*
Hon. DIANE P. WOOD, *Circuit Judge*
Hon. TERENCE T. EVANS, *Circuit Judge*

ORDER

Plaintiff-Appellant filed a petition for rehearing and rehearing en banc on November 27, 2006. No judge in regular active service has requested a vote on the petition for rehearing en banc and all members of the original panel have voted to DENY rehearing. Accordingly,

IT IS ORDERED that the petition for rehearing be, and the same is hereby, DENIED.

APPENDIX C

EXHIBIT # 4

MAINTENANCE MANAGER
CHICAGO PROCESSING & DISTRIBUTION CENTER

UNITED STATES POSTAL SERVICE

Thomas M.
5474
Maintenance Support Clerk PS-5

Official personnel records indicates you failed to receive a position during the bidding process. Accordingly you are now considered an unassigned regular employee.

This notice serves as official notification of such and advises of your new assignment within the Central Facility.

Assignment:	Maintenance Support Clerk PS-5
Work Schedule:	Tour 3
Non-Schedule Days:	THU/FRI

The effective date of your new assignment is October 12, 1996.

/s/Charles S. May
for John U. Garcia

FJR/fjr

cc: Herby Weathers, Jr.
Personnel

Date Rec'd _____

Signature _____

APPENDIX D

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Case No. 02C3576
EXHIBIT #5

MICHAEL A. THOMAS	)
	)
Plaintiff	)
	)
v.	)
	)
JOHN E. POTTER,	)
POSTMASTER GENERAL - -	)
UNITED STATES POSTAL SERVICE,	)
	)
Defendant	)
	)

DEFENDANT'S RESPONSE TO
PLAINTIFF'S INITIAL REQUESTS FOR ADMISSION

COMES NOW the Defendant, John E. Potter, Postmaster General, United States Postal Service, and respectfully submits its Response to Plaintiff's Initial Requests for Admission.

1. Plaintiff PS Form 50 (exhibit #14) states that "in accordance with grievance settlement 1-J-1159-93 seniority

will be 10-03-92 as unassigned regular. However, are there any stipulation of becoming unassigned regular agree upon pursuant to the Plaintiff EEO Settlement Agreement of December 5, 1994 (exhibit #13)?

ANSWER: The settlement agreement does not state that plaintiff will be designated an unassigned regular. Plaintiff was designated as "unassigned" because there were no positions available when he was placed into the job pursuant to the EEO settlement agreement.

2. Pursuant to section 2D of the MOU (exhibit #1) were there any unassigned maintenance employees that was allowed to excise their preference by craft seniority?

ANSWER: No maintenance employees were allowed to exercise options under 2D of the MOU dated 1/5/96.

3. Were the five aforementioned female listed in this complaint, classified as an unassigned employee during the period of January 1996 through June 1999?

ANSWER: The five female employees identified by Plaintiff in his Complaint were listed as unassigned employees during the subject time period.

4. In regard to the five aforementioned female employees, did their tour change?

ANSWER: Their tours did not change during the time period identified in number 3 above.

5. Was there a bidding process conducted for the unassigned Maintenance Support Clerk during the period of January 1996 through February 1997?

ANSWER: There was no bidding process during the subject time period.

6. Prior to the Plaintiff receiving his official Notice of Assignment (exhibit#3) was the Plaintiff afforded an opportunity to exercise his preference?

ANSWER: Neither plaintiff or any other maintenance support clerk was allowed to exercise their preferences.

I declare under penalty of perjury, that the foregoing information contained in Defendant's responses to Plaintiff's Initial Requests For Admission is true and accurate to the best of my knowledge.

/s/_____
Charles E. May
Maintenance Manager
Chicago Processing &
Distribution Center
United States Postal Service